

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN,

ON MOTION FOR REHEARING

NO. 03-22-00539-CR

Brian Scott Sharp, Appellant

v.

The State of Texas, Appellee

**FROM THE 207TH DISTRICT COURT OF COMAL COUNTY
NO. CR2020-730, THE HONORABLE DIB WALDRIP, JUDGE PRESIDING**

MEMORANDUM OPINION

After considering the motion for rehearing filed by appellant Brian Scott Sharp and the State's response, we deny the motion for rehearing but withdraw our opinion and judgment issued on December 20, 2023, and substitute the following opinion and judgment in their place.

A jury found Brian Scott Sharp guilty of the first-degree felony offenses of attempted capital murder of a peace officer, *see Tex. Penal Code §§ 15.01, 19.03*, and aggravated assault against a public servant, *see id. § 22.02(b)(2)(B)*. In two appellate issues, Sharp contends that the trial court and the prosecutor violated the Sixth and Fourteenth Amendments of the U.S. Constitution and Article I, Section 10 of the Texas Constitution. *See U.S. Const.*

Appendix A

amends. VI, XIV; Tex. Const. art. I, § 10. Sharp contends that the trial court should have given the jury a self-defense instruction and that the prosecutor improperly introduced evidence during closing arguments. For the following reasons, we modify the judgments of conviction to correct clerical errors and affirm the judgments of conviction as modified.

BACKGROUND¹

In the middle of the day on August 20, 2020, Deputies Eddy Luna, Nicholas Nolte, and Rene Luna with the Comal County Sheriff's Office were on Sharp's property to execute a felony arrest warrant on him at his house. Deputies Eddy Luna and Nolte had been unsuccessful in executing the warrant on two prior occasions. On their first attempt, the deputies spoke with Sharp's son, who lived with his father and was outside the house on the property. The son told the deputies that he was not sure if Sharp was home, but when they knocked on the door, it was "locked from the inside," so they "had a pretty good idea somebody was there and nobody was going to come out." They told Sharp's son that Sharp had a warrant for his arrest, that he needed to take care of it, and that they would be coming back. On their second attempt, they knocked on the door, but no one answered. Deputy Nolte walked around to the back of the house where he found "several large weed plants," and when he returned to the front of the house, the deputies "heard something out the back." They moved to the back and observed that the plants had been uprooted and thrown over the fence. At that point, they "knew [Sharp] was gone" and that they had "missed him again."

¹ Because the parties are familiar with the facts of the case, its procedural history, and the evidence adduced at trial, we do not recite them in this opinion except as necessary to advise the parties of the Court's decision and the basic reasons for it. *See Tex. R. App. P.* 47.1, .4.

On their third attempt, which was on August 20, 2020, the deputies approached Sharp's house on foot from different directions, and, as he was walking up the driveway, Deputy Eddy Luna saw "a person who looked just like Brian Sharp" with his dog outside. The "dog alerted," and Sharp "ran inside the house and locked the door behind him." The deputies, who were in uniform, knocked on the house's doors and windows, advised Sharp through the doors and windows that they were from the sheriff's office and were there to serve the felony arrest warrant, and directed Sharp to come out of the house. Sharp did not comply with the deputies' directive but stayed inside the house and covered up windows with paper and cardboard.

For about one hour, the deputies continued to announce who they were and why they were there, knock on the doors and windows, and direct Sharp to come outside. After about one hour, the deputies attempted to remove the covering from a window, and Sharp began talking to them through the window and asked to see the warrant. The deputies attempted to show him an electronic copy of the warrant through the window and continued to direct him to come out of the house. They advised him that if he did not come out, they were "going to come in one way or the other" and were "not going to leave today without [him]." Sharp continued to refuse to come out and through the window called them "trespassers" and "wrongdoers." He also told them that they had been warned and to leave the property. After approximately thirty more minutes and obtaining approval from their sergeant, Deputy Nolte hit a sledgehammer against one of the doors and then kicked it open with his foot.² As the door opened, Deputies

² Sharp testified that when the deputies were hitting his door with the sledgehammer, he thought that it was gunfire, but he later agreed that they were not shooting at him.

Nolte and Eddy Luna were next to each other in the doorway, Deputy Eddy Luna drew his gun,³ and Sharp shot Deputy Eddy Luna in the arm with a shotgun. After the shooting, Sharp surrendered and was arrested at the scene.

Sharp was indicted for two counts of aggravated assault against a public servant and two counts of attempted capital murder of a peace officer. During the jury trial, the State waived Count I, aggravated assault against a public servant (Eddy Luna), and Count IV, attempted capital murder of a peace officer (Nicholas Nolte). The State's witnesses at trial included the three deputies and a crime scene specialist who collected evidence at the scene. The evidence showed that Deputy Eddy Luna lost a substantial amount of blood and was at risk of losing his life from the shotgun wounds. Deputy Rene Luna applied a tourniquet at the scene to slow the loss of blood, but Deputy Eddy Luna's right arm ultimately had to be amputated. The State's exhibits included video recordings from the body cameras of Deputies Rene Luna and Nolte that captured the incident; photographs; and physical evidence collected at the scene, including Sharp's shotgun and notebook.

The defense's theories at trial were that the deputies mishandled the situation and violated their policies by not seeking assistance from the crisis negotiation team or the Special Weapons and Tactics Team (S.W.A.T.) and that Sharp acted in self-defense when he shot his shotgun by "instinct" when the deputies kicked in his door. Sharp testified in his own defense, and the defense's exhibits included a chapter on special operations from the sheriff's office's policy manual. Sharp admitted that he knew the deputies were law enforcement officers, that he was aware they were at his house to execute the arrest warrant, and that they directed him to

³ Deputy Eddy Luna testified that he placed his gun into a "sul position, kind of a resting position on [his] chest."

come out of the house, but he testified that he acted out of self-defense to knock the gun out of Deputy Eddy Luna's hand when the door was kicked open. He testified that Deputy Eddy Luna had his gun pointed at Sharp; that “[their] eyes met”; and that at that moment, he “thought [he] was going to die” and that he “was going to get shot. No doubt in [his] mind.” He compared the situation to the “videos of the police shooting people.”

Sharp disputed seeing the deputies when he was outside his house. He testified that when the deputies “very first came up to his property,” he looked out of his window and saw “armed men” and the barrel of a gun pointing in the window; that they were “aiming guns” at him; that they were banging the barrels of their pistols on the windows; and that “it scared [him] to death.” He admitted that he had been outside calling his dog and that he locked the door when he went back inside because that is what he “always” did but testified that his windows “were already covered up.”

Sharp requested a self-defense instruction, but the trial court denied his request. The jury found Sharp guilty of Count II, attempted capital murder of a peace officer (Eddy Luna), *see Tex. Penal Code §§ 15.01* (addressing “criminal attempt”), 19.03 (stating elements of capital murder), and Count III, aggravated assault against a public servant (Nicholas Nolte), *see id. §§ 22.01(a)(2)* (stating that person commits offense of assault if person “intentionally or knowingly threatens another with imminent bodily injury”), 22.02(b)(2)(B) (stating that offense of aggravated assault is first-degree felony when offense is committed against “person the actor knows is a public servant while the public servant is lawfully discharging an official duty”).

In the punishment phase of trial, the jury assessed fifty-five years’ confinement and a \$10,000 fine for Count II and twenty-five years’ confinement and a \$10,000 fine for

Count III. The trial court signed judgments of conviction in accordance with the jury's verdicts and ordered the sentences to run concurrently. This appeal followed.

ANALYSIS

Jury Charge

In his first issue, Sharp argues that the trial court erred and violated the Sixth and Fourteenth Amendments of the U.S. Constitution and Article I, Section 10 of the Texas Constitution when it did not include a self-defense instruction in the jury charge. *See* U.S. Const. amends. VI (addressing rights of accused), XIV, § 1 (prohibiting states from depriving person of liberty without due process of law); Tex. Const. art. I, § 10 (addressing rights of accused).

Standard of Review and Applicable Law

We review alleged jury charge error in two steps: first, we determine whether error exists; if so, we then evaluate whether sufficient harm resulted from the error to require reversal. *Arteaga v. State*, 521 S.W.3d 329, 333 (Tex. Crim. App. 2017); *Ngo v. State*, 175 S.W.3d 738, 743 (Tex. Crim. App. 2005). The degree of harm required for reversal depends on whether the jury charge error was preserved in the trial court. *Marshall v. State*, 479 S.W.3d 840, 843 (Tex. Crim. App. 2016); *see Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1985) (op. on reh'g) (setting forth procedure for appellate review of claim of jury charge error). If the complaint about jury charge error was preserved in the trial court, "then reversal is required if there was some harm to the defendant." *Marshall*, 479 S.W.3d at 843.

In this case, the trial court denied Sharp's request for an instruction on a defensive issue. "A defendant is entitled to an instruction on any defensive issue raised by the evidence, whether that evidence is weak or strong," unimpeached or contradicted, and "regardless of how

other under Section 9.31 [of the Texas Penal Code] and (2) when and to the degree the actor reasonably believes the deadly force is immediately necessary: (A) to protect the actor against the other's use or attempted use of unlawful deadly force.” Tex. Penal Code § 9.32(a). Generally, “a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force.” *Id.* § 9.31(a).

Sharp does not contest that the deputies were on his property to execute a felony arrest warrant and that he refused to follow their directive to come out of his house. *See Tex. Code Crim. Proc. art. 15.01* (stating that “warrant of arrest” is written order directed to peace officer “commanding him to take the body of the person accused of an offense, to be dealt with according to law”). In the context of resisting arrest that an actor “knows is being made by a peace officer” even if the arrest is “unlawful,” the “use of force against another is not justified” unless:

(1) if, *before the actor offers any resistance*, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest . . . ; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.

Tex. Penal Code § 9.31(b)(2), (c) (emphasis added).

To be entitled to a self-defense instruction under the plain language of these statutory provisions, it was Sharp's burden to present some evidence that the deputies used “unlawful force” and that before he offered “any resistance,” the deputies used or attempted “to use greater force than necessary to make the arrest.” *See id.* § 9.31(a), (b)(2), (c); *Lopez v. State*,

the trial court views the credibility of the defense.” *Celis v. State*, 416 S.W.3d 419, 430 (Tex. Crim. App. 2013) (citing *Allen v. State*, 253 S.W.3d 260, 267 (Tex. Crim. App. 2008)). A defendant “bears the burden of production” with respect to a defense,” *Shaw v. State*, 243 S.W.3d 647, 658 (Tex. Crim. App. 2007) (quoting *Zuliani v. State*, 97 S.W.3d 589, 594 (Tex. Crim. App. 2003)), and “[t]he issue of the existence of a defense is not submitted to the jury unless evidence is admitted supporting the defense,” *Kuhn v. State*, 393 S.W.3d 519, 532 (Tex. App.—Austin 2013, pet. ref’d) (quoting Tex. Penal Code § 2.03(c)); *see Walters v. State*, 247 S.W.3d 204, 208–09 (Tex. Crim. App. 2007) (discussing when defendant is entitled to jury instruction on defensive issue); *Shaw*, 243 S.W.3d at 657 (describing “burden of production” as “burden of making a *prima facie* case”).

“[A] defense is supported (or raised) by the evidence if there is some evidence, from any source, on each element of the defense that, if believed by the jury, would support a rational inference that that element is true.” *Shaw*, 243 S.W.3d at 657–58; *see Juarez v. State*, 308 S.W.3d 398, 404 (Tex. Crim. App. 2010) (“The defendant bears the burden of showing that each element of the defense has been satisfied.”). In determining whether a defense is supported by the evidence, the court views the evidence in the light most favorable to the defendant’s requested jury instruction, *Jordan v. State*, 593 S.W.3d 340, 343 (Tex. Crim. App. 2020), and relies “on its own judgment, formed in the light of its own common sense and experience, as to the limits of rational inference from the facts proven,” *Shaw*, 243 S.W.3d at 658.

Did the trial court err by denying Sharp’s request for a self-defense instruction?

In this case, the evidence was that Sharp used deadly force. “A person is justified in using deadly force against another: (1) if the actor would be justified in using force against the

600 S.W.3d 43, 45 (Tex. Crim. App. 2020) (discussing court’s construction of statute’s “plain meaning” and explaining that court generally construes “each word, phrase, clause and sentence” in context and “according to the rules of grammar and common usage”); *Lang v. State*, 561 S.W.3d 174, 179–80 (Tex. Crim. App. 2018) (explaining that courts “ordinarily give effect to plain meaning” when interpreting statutes).⁴ And because Sharp used deadly force, it was his burden to present evidence that he reasonably believed that deadly force was “immediately necessary” to protect himself against the deputies’ “use or attempted use of unlawful deadly force.” See Tex. Penal Code § 9.32(a)(2)(A); *see also id.* § 1.07(a)(42) (defining “reasonable belief” from perspective of “ordinary and prudent man in the same circumstances as the actor”).

Sharp argues that it was for the jury to decide whether Deputy Eddy Luna “used greater force than necessary” and whether Sharp’s “beliefs, fears, and actions were reasonable.” Sharp relies on his testimony that the officers pointed their guns at the house and through windows and banged the barrels of the guns on the windows, that Deputy Eddy Luna pointed his gun at Sharp when the door opened, that Sharp thought the deputies were “shooting at him,” that he shot his shotgun by “instinct” because he was afraid for his life, and that he did not intend to resist arrest when he shot the deputy. But Sharp’s testimony, assuming it is credible, does not

⁴ As part of his first appellate issue, Sharp argues that the trial court based its denial of the self-defense instruction on a misstatement of the law regarding resisting arrest. He relies on Texas Penal Code Section 38.03, which addresses the offense of resisting arrest. See Tex. Penal Code § 38.03. But that Section is not inconsistent with our analysis here because it concerns a person committing a separate offense when the person uses force to resist arrest. In addition to the element of “intentionally prevent[ing] or obstruct[ing] a person he knows is a peace officer . . . from effecting an arrest,” the offense’s elements include “using force against the peace officer or another.” See *id.*; *see also Dobbs v. State*, 434 S.W.3d 166, 170–73 (Tex. Crim. App. 2014) (discussing elements of resisting arrest statute). In other words, a person who resists arrest without using force against a peace officer or another has not committed an offense under Section 38.03, but it does not follow that resisting arrest only encompasses using force against the officer or another.

support reasonable inferences that the deputies used unlawful force against Sharp, that he reasonably believed that deadly force was “immediately necessary” to protect himself against the deputies’ “use or attempted use of unlawful deadly force” when he shot the shotgun, or that they “used or attempted to use greater force than necessary” before Sharp resisted being arrested.

“In making an arrest, all reasonable means are permitted to be used to effect it.” Tex. Code Crim. Proc. art. 15.24. Although an officer should only use the amount of force that “is necessary to secure the arrest and detention of the accused,” *see id.*, in the case of a felony, an “officer may break down the door of any house for the purposes of making an arrest, if he be refused admittance after giving notice of his authority and purpose,” *id.* art. 15.25. An officer also is not required to have an arrest warrant in his possession when making an arrest. *Id.* art. 15.26. The deputies’ testimony and the video recordings from the body cameras show the deputies directing Sharp to come out of the house because of the arrest warrant, attempting to show him an electronic copy of the warrant, and warning him that they would be coming into his house if he did not comply with their directive. The evidence was undisputed that the deputies identified themselves and why they were there—to execute the felony warrant of arrest—and directed him to come out of the house for over an hour before kicking the door open.

Further, crediting Sharp’s testimony that the deputies were banging their guns on the windows or doors and that Deputy Eddy Luna was pointing his gun at Sharp when the door opened, these actions would not have been unlawful. An officer’s knocking on doors and windows in an effort to serve an arrest warrant does not amount to unlawful force, and the evidence was undisputed that the deputies did not discharge their firearms at any time during the incident. *See Porteous v. State*, 259 S.W.3d 741, 747–48 (Tex. App.—Houston [1st Dist.] 2007, pet. dism’d) (affirming trial court’s denial of defendant’s request for self-defense instruction and

observing that although there was evidence that defendant was afraid officer was going to shoot him and that officer had drawn his gun, defendant “presented no evidence that [the officer] used greater force than necessary to arrest [the defendant]”). As our sister court observed, “[o]ne may not assume that the threatened use of force by a peace officer will become more than a threat or that the use of such force will be greater than necessary to effect an arrest.” *Id.* at 748; *see Walker v. State*, 994 S.W.2d 199, 202 (Tex. App.—Houston [1st Dist.] 1999, pet. ref’d) (affirming trial court’s denial of self-defense instruction, observing that “there was some evidence that tended to show that appellant was merely trying to disarm the police officer when [appellant] shot him” but that there was no evidence that officer used or attempted to use excessive force when officer drew weapon and ordered appellant to stay on ground, and explaining that appellant was “not entitled to assume” that “[officer’s] threatened use of force would have escalated to an excessive use of force”); *see also, e.g., Mays v. State*, 318 S.W.3d 368, 383 (Tex. Crim. App. 2010) (explaining that “appellant cannot rely upon evidence of his paranoia and psychotic thinking to raise a ‘reasonable’ mistaken belief concerning the officers’ intentions”). Further, to the extent Sharp relies on his testimony that he believed the deputies had fired their guns prior to the door being opened, this testimony was in the context of the officers’ use of the sledgehammer to open the door, which the evidence conclusively established was after Sharp had resisted arrest. *See Tex. Penal Code § 9.31(c)(1).*

Because the record does not reflect evidence that would support a rational finding on each of the applicable elements of self-defense in this case, we conclude that Sharp was not entitled to an instruction on the issue. *See id.* §§ 9.31, .32; *Juarez*, 308 S.W.3d at 404 (stating that “defendant bears the burden of showing that each element of the defense has been satisfied”); *Shaw*, 243 S.W.3d at 657–58 (requiring some evidence of each element of defense

that, if believed, would support rational inference that element is true); *Kuhn*, 393 S.W.3d at 532 (“The issue of the existence of a defense is not submitted to the jury unless evidence is admitted supporting the defense.”). On this basis, we overrule Sharp’s first issue.

Prosecutor’s Closing Argument

In his second issue, Sharp argues that the prosecutor introduced evidence during closing argument in violation of the Sixth and Fourteenth Amendments of the U.S. Constitution and Article I, Section 10 of the Texas Constitution. *See* U.S. Const. amends. VI, XIV, § 1; Tex. Const. art. I, § 10. Sharp contends that in the following portion of his closing argument, the prosecutor “injected a new and harmful fact into the case” when he referenced that Sharp’s shotgun had “Ed written right on the bottom”:

The one thing that has kind of haunted me in all of this that you haven’t seen yet—and I don’t understand it. I wasn’t going to ask [Sharp] about it. I don’t know what his response would be, but you heard him tell you he bought this [the shotgun]. He’s owned this for years. He’s maybe shot it a handful of times.

You know, when you look at it, you see Ed written on the bottom. It’s really weird. We know his sons’ names are Dylan and Conner. We know his name is Brian. But for some reason he’s got Ed written right on the bottom of this thing. We know he was writing that day in his journal and on his body and here it is written on the bottom of the gun that he’s owned for years.

The prosecutor made this argument immediately after referencing the evidence that the jury could consider and advising the jury that it could “pore through all of this evidence.” The evidence admitted at trial included the shotgun and Sharp’s notebook.

Sharp did not object to the prosecutor’s argument or raise the complaint that he raises here at trial. “To preserve a complaint about improper jury argument for appellate review, a defendant must object and pursue the objection to an adverse ruling.” *Owens v. State*,

549 S.W.3d 735, 744 (Tex. App.—Austin 2017, pet. ref'd) (citing *Cockrell v. State*, 933 S.W.2d 73, 89 (Tex. Crim. App. 1996)); *see Tex. R. App. P. 33.1(a)* (stating required steps to preserve complaint for appellate review); *Proenza v. State*, 541 S.W.3d 786, 808 (Tex. Crim. App. 2017) (“Almost all error—even constitutional error—may be forfeited if the appellant fails to object.”) (citing *Fuller v. State*, 253 S.W.3d 220, 232 & n.48 (Tex. Crim. App. 2008))); *Hooper v. State*, 106 S.W.3d 270, 273 (Tex. App.—Austin 2003, no pet.) (stating that as general rule, trial counsel must object or otherwise preserve error, “even if [error] is ‘incurable’ or ‘constitutional’” (citing *Cockrell*, 933 S.W.2d at 89)). Because Sharp did not object to the prosecutor’s argument or raise the complaint with the trial court that he raises on appeal, he has not preserved this issue for our review. *See Tex. R. App. P. 33.1(a); Owens*, 549 S.W.3d at 744.

Further, even if Sharp had preserved this complaint, we would conclude that the prosecutor’s closing argument was not improper. *See Freeman v. State*, 340 S.W.3d 717, 727 (Tex. Crim. App. 2011) (stating that “reasonable deduction from the evidence” is proper jury argument). Sharp argues that the prosecutor’s closing argument injected new facts, but his shotgun and journal were available for the jury’s review as they were in evidence. Given this evidence, we conclude that the prosecutor’s argument about the shotgun was a reasonable deduction from the evidence. *See id.*

For these reasons, we overrule this issue.

Clerical Error in Judgments

In the judgment of conviction for Count II, attempted capital murder of a peace officer, the “Statute for Offense” incorrectly lists “22.02(b)(2)(B) Penal Code,” and in the

judgment of conviction for Count III, aggravated assault against a public servant, the “Statute for Offense” incorrectly lists “15.01/19.03 Penal Code.”

This Court has authority to modify incorrect judgments when the necessary information is available to do so. *See Tex. R. App. P. 43.2(b)* (authorizing court of appeals to modify trial court’s judgment and affirm it as modified); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993) (concluding that Texas Rules of Appellate Procedure empower courts of appeals to reform judgments). Accordingly, we modify the judgment of conviction for Count II, attempted capital murder of a peace officer, to reflect that the “Statute for Offense” is “15.01/19.03 Penal Code” and the judgment of conviction for Count III, aggravated assault against a public servant, to reflect that the “Statute for Offense” is “22.02(b)(2)(B) Penal Code.”⁵

CONCLUSION

Having overruled Sharp’s issues but concluding that the judgments contain non-reversible clerical errors, we modify the judgments as described above and affirm the judgments of conviction as modified.

Rosa Lopez Theofanis, Justice

Before Chief Justice Byrne, Justices Kelly and Theofanis

Modified and, As Modified, Affirmed on Motion for Rehearing

Filed: April 11, 2024

Do Not Publish

⁵ The trial court signed *nunc pro tunc* judgments to correct other clerical errors in the judgments of convictions, but it did not correct the clerical errors in the judgments concerning the applicable statutes for the offenses.



COURT OF APPEALS

THIRD DISTRICT OF TEXAS
P.O. BOX 12547, AUSTIN, TEXAS 78711-2547
www.txcourts.gov/3rdcoa.aspx
(512) 463-1733

DARLENE BYRNE, CHIEF JUSTICE
THOMAS J. BAKER, JUSTICE
GISELA D. TRIANA, JUSTICE
CHARI L. KELLY, JUSTICE
EDWARD SMITH, JUSTICE
ROSA LOPEZ THEOFANIS, JUSTICE

JEFFREY D. KYLE, CLERK

July 10, 2024

Ms. Holly G. Weatherford
Assistant District Attorney
199 Main Plaza, Ste. 2007
New Braunfels, TX 7813
* DELIVERED VIA E-MAIL *

Mr. Kurt S. Hopke
20540 Hwy. 46 W., Suite 115-213
Spring Branch, TX 78070
* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 03-22-00539-CR
Trial Court Case Number: CR2020-730

Style: Brian Scott Sharp
v. The State of Texas

Dear Counsel:

Appellant's motion for rehearing en banc was denied by this Court on the date noted above.

Very truly yours,

JEFFREY D. KYLE, CLERK

BY: Chris Knowles
Chris Knowles, Deputy Clerk

cc: Mr. Joshua D. Presley

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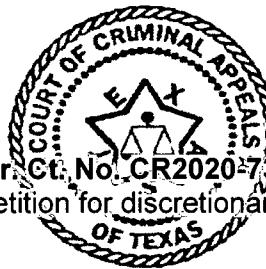
9/4/2024

SHARP, BRIAN SCOTT Tr. Ct. No. CR2020-730 COA Case No. 03-22-00539-CR

PD-0616-24

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk



KURT HOPKE
ATTORNEY AT LAW
8303 SOUTHWEST FWY SUITE 545
HOUSTON, TX 77074
* DELIVERED VIA E-MAIL *



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9/4/2024

SHARP, BRIAN SCOTT Tr.Ct. No. **CR2020-730** **COA Case No. 03-22-00539-CR** **PD-0616-24**

On this day, the Appellant's petition for discretionary review has been refused.



Deana Williamson, Clerk

DISTRICT ATTORNEY COMAL COUNTY
JENNIFER THARP
150 N SEGUIN SUITE 307
NEW BRAUNFELS, TX 78130
* DELIVERED VIA E-MAIL *

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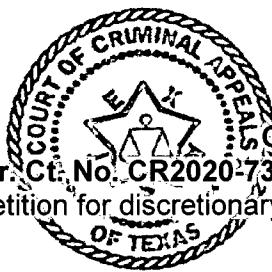
SHARP, BRIAN SCOTT

Tr. Ct. No. CR2020-730

COA Case No. 03-22-00539-CR

PD-0616-24

On this day, the Appellant's petition for discretionary review has been refused.



Deana Williamson, Clerk

3RD COURT OF APPEALS CLERK

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AUSTIN, TX 78711

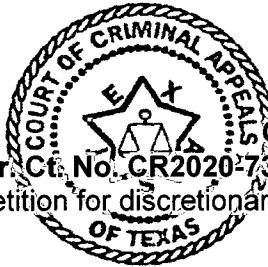
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9/4/2024

SHARP, BRIAN SCOTT Tr Ct. No. **CR2020-730** COA Case No. **03-22-00539-CR**
PD-0616-24

On this day, the Appellant's petition for discretionary review has been refused.



Deana Williamson, Clerk

PRESIDING JUDGE 207TH DISTRICT COURT
150 N SEGUIN, STE 317
NEW BRAUNFELS, TX 78130-5159
* DELIVERED VIA E-MAIL *

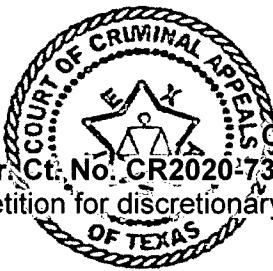
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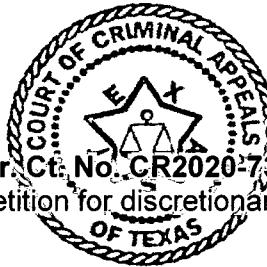
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Deana Williamson, Clerk

STATE PROSECUTING ATTORNEY
STACEY SOULE
PO BOX 13046
AUSTIN, TX 78711
* DELIVERED VIA E-MAIL *

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DISTRICT CLERK COMAL COUNTY
150 N SEGUIN AVE.
SUITE 3009
NEW BRAUNFELS, TX 78130
* DELIVERED VIA E-MAIL *

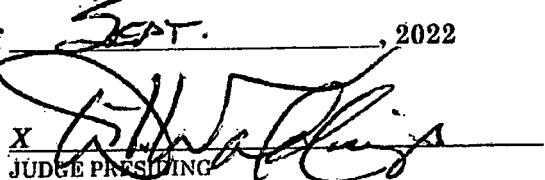
Execution / Suspension of Sentence (select one)

The Court ORDERS Defendant's sentence EXECUTED. The Court FINDS that Defendant is entitled to the jail time credit indicated above. The attorney for the state, attorney for the defendant, the County Sheriff, and any other person having or who had custody of Defendant shall assist the clerk, or person responsible for completing this judgment, in calculating Defendant's credit for time served. All supporting documentation, if any, concerning Defendant's credit for time served is incorporated herein by this reference.

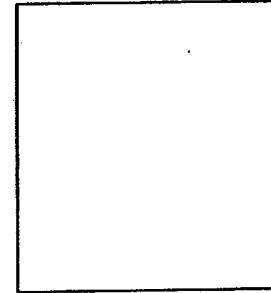
Furthermore, the following special findings or orders apply:

****THERE IS AN AFFIRMATIVE FINDING THAT A DEADLY WEAPON WAS USED OR EXHIBITED IN THE COMMISSION OF THIS OFFENSE.**

Signed and entered on this 15 day of Sept., 2022


X
JUDGE PRESIDING

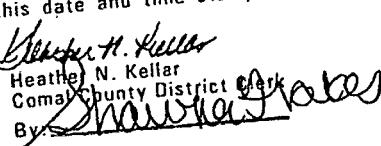
Clerk: Heather Kellar



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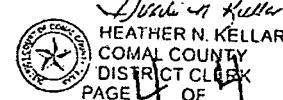
STATE OF TEXAS
COUNTY OF COMAL
I certify this to be a true and correct
copy of the record FILED & RECORDED
in the Official Court records of District
Court on this date and time stamped
thereon.




Heather N. Kellar
Comal County District Clerk

By:

CERTIFIED TO BE A TRUE AND
CORRECT COPY.



Counsel / Waiver of Counsel (select one)

Defendant appeared in person with Counsel.
 Defendant appeared without counsel and knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.
 Defendant was tried in absentia.

Both parties announced ready for trial. It appeared to the Court that Defendant was mentally competent to stand trial. A jury was selected, impaneled, and sworn, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and the arguments of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict of "Guilty" in the presence of Defendant and defense counsel, if any.

The Court received the verdict and ORDERED it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

Jury. Defendant entered plea and filed a written election to have the jury assess his punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, returned its verdict as indicated above.
 Court. Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.
 No Election. Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

In accordance with the jury's verdict, the Court ADJUDGES Defendant is GUILTY of the above offense. The Court FINDS that the Presentence Investigation, if so ordered, was done according to the applicable provisions of Subchapter F, Chapter 42A, Tex. Code Crim. Proc.

The Court ORDERS Defendant punished in accordance with the jury's verdict or Court's findings as to the proper punishment as indicated above. After having conducted an inquiry into Defendant's ability to pay, the Court ORDERS Defendant to pay all fines, court costs, reimbursement fees, and restitution as indicated above and further detailed below.

Punishment Options (select one)

Confinement in State Jail or Institutional Division. The Court ORDERS the authorized agent of the State of Texas or the County Sheriff to take and deliver Defendant to the Director of the Correctional Institutions Division, TDCJ, for placement in confinement in accordance with this judgment. The Court ORDERS Defendant remanded to the custody of the County Sheriff until the Sheriff can obey the directions in this paragraph. Upon release from confinement, the Court ORDERS Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.
 County Jail—Confinement / Confinement in Lieu of Payment. The Court ORDERS Defendant committed to the custody of the County Sheriff immediately or on the date the sentence commences. Defendant shall be confined in the county jail for the period indicated above. Upon release from confinement, the Court ORDERS Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.
 Fine Only Payment. The punishment assessed against Defendant is for a FINE ONLY. The Court ORDERS Defendant to proceed immediately to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay the fine, court costs, reimbursement fees, and restitution ordered by the Court in this cause.
 Confinement as a Condition of Community Supervision. The Court ORDERS Defendant confined _____ days in _____ as a condition of community supervision. The period of confinement as a condition of community supervision starts when Defendant arrives at the designated facility, absent a special order to the contrary.

Fines Imposed Include (check each fine and enter each amount as pronounced by the court):

General Fine (§12.32, 12.33, 12.34, or 12.35, Penal Code, Transp. Code, or other Code) \$ 10,000.00 (not to exceed \$10,000)
 Add'l Monthly Fine for Sex Offenders (Art. 42A.653, Code Crim. Proc.) \$ _____ (\$5.00 per month of community supervision)
 Child Abuse Prevention Fine (Art. 102.0186, Code Crim. Proc.) \$ _____ (\$100)
 EMS, Trauma Fine (Art. 102.0185, Code Crim. Proc.) \$ _____ (\$100)
 Family Violence Fine (Art. 42A.504 (b), Code Crim. Proc.) \$ _____ (\$100)
 Juvenile Delinquency Prevention Fine (Art. 102.0171(a), Code Crim. Proc.) \$ _____ (\$50)
 State Traffic Fine (§ 542.4031, Transp. Code) \$ _____ (\$50)
 Children's Advocacy Center Fine - as Cond of CS (Art. 42A.455, Code Crim. Proc.) \$ _____ (not to exceed \$50)
 Repayment of Reward Fine (Art. 37.073/42.152, Code Crim. Proc.) \$ _____ (To Be Determined by the Court)
 Repayment of Reward Fine - as Cond of CS (Art. 42A.301 (b) (20), Code Crim. Proc.) \$ _____ (not to exceed \$50)
 DWI Traffic Fine (a/k/a Misc. Traffic Fines) (§ 709.001, Transp. Code) \$ _____ (not to exceed \$5,000)

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Heather N. Kellar
Comal County
District Clerk
Page 3 of 4

FILED FOR RECORD
At 11:24 o'clock AM

SEP 16 2022

HEATHER N. KELLAR
CLERK DISTRICT COURT
COMAL COUNTY, TEXAS
BY AD DEPUTY



JENNIFER THARP
Comal County Criminal District Attorney

September 13, 2022

A Nunc Pro Tunc was necessary on the BRIAN SCOTT SHARP (CR2020-730 CT II) judgment due to an error with the TRN. The judgment should have reflected D001 instead of A005.

A Nunc Pro Tunc was necessary on the BRIAN SCOTT SHARP (CR2020-730 CT II) judgment due to an error with the TRN. The judgment should have reflected 9213351607 instead of 9213353650.

Shelby Lehmann
Felony Legal Assistant
Comal County Criminal District Attorney's Office
199 Main Plaza, Suite 2007
New Braunfels, Texas 78130
830-221-1300 Ext. 1728

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Shelby A. Lehmann
HEATHER N. KELLAR
COMAL COUNTY
DISTRICT CLERK
PAGE 1 OF 1

199 Main Plaza, Suite 2007, New Braunfels, Texas 78130-5161 Tel: (830) 221-1300 Fax: (830) 608-2008

Appendix B

CASE No. CR2020-730 COUNT II
INCIDENT No./TRN: 9213351607 TRS: D001

THE STATE OF TEXAS

v.

BRIAN SCOTT SHARP

STATE ID No.: TX-07969786

§ IN THE DISTRICT COURT

§ 207TH JUDICIAL DISTRICT

§ COMAL COUNTY, TEXAS

§

NUNC PRO TUNC

JUDGMENT OF CONVICTION BY JURY

Judge Presiding: **HON. DIB WALDRIP** Date Sentence Imposed: **AUGUST 26, 2022**

Attorney for State: **DANIEL FLOYD** Attorney for Defendant: **SAMUEL ROSEN**

Offense for which Defendant Convicted:

ATTEMPT CAPITAL MURDER OF A PEACE OFFICER

Charging Instrument: **INDICTMENT** Statute for Offense: **22.02 (b)(2)(B) PENAL CODE**

Date of Offense: **AUGUST 20, 2020** Plea to Offense: **NOT GUILTY**

Degree of Offense: **FIRST DEGREE FELONY**

Verdict of Jury: **GUILTY** Findings on Deadly Weapon: ****AFFIRMATIVE)**

Plen to 1st Enhancement Paragraph: **N/A** Findings on 1st Enhancement Paragraph: **N/A**

Plen to 2nd Enhancement Paragraph: **N/A** Findings on 2nd Enhancement Paragraph: **N/A**

Punished Assessed by: **JURY** Date Sentence Commences: (Date does not apply to confinement served as a condition of community supervision.) **AUGUST 26, 2022**

Punishment and Place of Confinement: **FIFTY FIVE (55)YEARS CONFINEMENT IN THE INSTITUTIONAL DIVISION, TDCJ**

THIS SENTENCE SHALL RUN CONCURRENTLY.

SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A
(The document setting forth the conditions of community supervision is incorporated herein by this reference.)

Defendant is required to register as sex offender in accordance with Chapter 62, Tex. Code Crim. Proc.
(For sex offender registration purposes only) The age of the victim at the time of the offense was N/A.

Fine: **\$10,000.00** Restitution: **\$** Restitution Payable to:

Court Costs: **\$290.00** Reimbursement Fees: **\$**

Was the victim impact statement returned to the attorney representing the State?
(FOR STATE JAIL FELONY OFFENSES ONLY) Is Defendant presumptively entitled to diligent participation credit in accordance with Article 42A.559, Tex. Code Crim. Proc? N/A

Total Jail **If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.**
Time Credit: **N/A DAYS** NOTES: **N/A**

This cause was called for trial by jury and the parties appeared. The State appeared by her District Attorney as named above

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CORRECT COPY.

Heather N. Keller
HEATHER N. KELLER
COMAL COUNTY
DISTRICT CLERK
PAGE 2 OF 2

Fourth Amendment to the Constitution of the United States

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Texas Penal Code § 9.22 Necessity

Conduct is justified if:

- 1) The actor reasonably believes the conduct is immediately necessary to avoid imminent harm;
- 2) The desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct; and
- 3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.

Texas Penal Code § 9.31 Self-defense

(a) except as provide in Subsection (b), a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force. The actor's belief that the force was immediately necessary as described by this subsection is presumed to be reasonable if the actor:

- (1) knew or had reason to believe that the person against whom the force was used:
 - (A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;
 - (B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or
 - (C) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery or aggravated robbery;
- (2) did not provoke the person against whom the force was used; and
- (3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

Texas Penal Code § 9.31 (continued)

(b) The use of force against another is not justified:

- (1) in response to verbal provocation alone;
- (2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c);
- (3) if the actor consented to the exact force used or attempted by the other;
- (4) if the actor provoked the other's use or attempted use of unlawful force, unless:
 - (A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and
 - (B) the other nevertheless continues or attempts to use unlawful force against the actor; or
- (5) if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person while the actor was:
 - (A) carrying a weapon in violation of Section 46.02; or
 - (B) possessing or transporting a weapon in violation of Section 46.05.

(c) The use of force to resist an arrest or search is justified:

- (1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and

Texas Penal code § 9.31 (continued)

- (2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.
- (d) The use of deadly force is not justified under this subchapter except as provided in Sections 9.32, 9.33 and 9.34
- (e) A person who has a right to be present at the location where the force is used, who has not provoked the person against whom the force is used, and who is not engaged in criminal activity at the time the force is used is not required to retreat before using force as described by this section.
- (F) For purposes of Subsection (a), in determining whether an actor described by Subsection (e) reasonably believed that the use of force was necessary, a finder of fact may not consider whether the actor failed to retreat.

Texas Penal Code § 9.32

Deadly Force in defense of Person

(a) A person is justified in using deadly force against another:

- (1) if the actor would be justified in using force against the other under Section 9.31; and
- (2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:
 - (A) to protect the actor against the other's use or attempted use of unlawful deadly force; or
 - (B) to prevent the other's imminent commission of Aggravated Kidnapping, Murder, Sexual Assault, Aggravated Sexual Assault, Robbery, or Aggravated Robbery.

(b) The actor's belief under Subsection (a)(2) that the deadly force was immediately necessary as described by that subdivision is presumed to be reasonable if the actor:

- (1) knew or had reason to believe that the person against whom the deadly force was used:
 - (A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;
 - (B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor ~~or~~ from the actor's habitation, vehicle, or place of business or employment; or
 - (C) was committing or attempting to commit an offense described by Subsection (a)(2)(B);
- (2) did not provoke the person against whom the force was used; and

Texas Penal Code § 9.32 (continued)

- (3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.
- (c) A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used is not required to retreat before using deadly force as described by this section.
- (d) For the purposes of Subsection (a)(2), in determining whether an actor described by Subsection (c) reasonably believed that the use of deadly force was necessary, a finder of fact may not consider whether the actor failed to retreat.

1 BRIAN SCOTT SHARP,
2 having been first duly sworn, testified as follows:

DIRECT EXAMINATION

4 BY MR. SAMUEL ROSEN:

5 Q. Could you state your name for the record.

6 A. Brian Sharp.

7 Q. And, Mr. Sharp, where did you live before going
8 to jail?

9 A. 1400 Springwood Drive in Comal County.

10 Q. Okay. If you could just speak up a little bit.
11 It's a little -- I know it's a little hard.

12 A. It's 1400 Springwood Drive in Comal County.

13 Q. And is that in Spring Branch?

14 A. Yes.

15 Q. Now, would you describe the area where you live
16 as particularly rural?

17 A. No. It's a well-developed residential area.

18 Q. But you live kind of off the main road; is that
19 correct?

20 A. Well, I -- not -- well, kind of. I mean, I
21 wouldn't call it -- I don't even -- it's a couple of
22 miles from the store.

23 Q. Okay. Okay.

24 A. There's housing areas all around.

25 Q. Okay.

1 A. There's a couple of ranches around.

2 Q. The house that you live in you built yourself?

3 A. Yes, I did.

4 Q. And out of stone or --

5 A. Right. I decided to build my own house rather
6 than build one out of two by fours and -- although there
7 are two by fours in it, the foundation walls are rock.
8 I dug the rock out myself and stacked them and cemented
9 them together to make a -- kind of an Alamo, if you
10 will. It's a -- a rock house.

11 Q. Okay. And about how large is your total
12 property?

13 A. Two acres.

14 Q. Okay. Now, I want to talk to you -- do you
15 remember the police coming to your property on August
16 20th, 2020?

17 A. Yes, sir, I do.

18 Q. I just want to talk about the minutes before
19 the -- an officer forced entry into your property. Do
20 you remember what you saw and heard in those five or so
21 minutes before the officer forced entry?

22 A. Yeah. I remember, yeah.

23 Q. Can you describe what you saw and heard?

24 A. Well, looking out the window, I could see men
25 out there with pistols drawn, aimed at the house. They

1 were banging on the window with the barrel of their
2 pistols.

3 They were saying they wanted to take me
4 out. They said that they wanted to spray OC gas on me,
5 which I don't even know what that is, to Tase me, to
6 send in a SWAT team, send in K-9 dogs. I was terrified.

7 Q. Okay. Did the banging -- well, did one of the
8 officers bang on the door of your house with a
9 sledgehammer?

10 A. Well, apparently so. From inside, I -- I
11 thought I heard shots being fired through the door.

12 Q. Okay.

13 A. It was a -- a really loud crack. I was only
14 inches from the door. It was a crack, crack and I
15 thought that was it. They were shooting to get into my
16 house.

17 Q. So let me clarify that. You couldn't see what
18 the officers were doing in the moment when they were
19 hitting your door with a sledgehammer. Is that what
20 you're saying?

21 A. Right.

22 Q. But you heard it and thought it was gunfire.
23 Am I interpreting that correctly?

24 A. Yes.

25 Q. Okay. And at a certain point one of the

1 officers actually breached and forced entry through your
2 door; correct?

3 A. Right.

4 Q. And did you see the officer when he did so?

5 A. Yeah. The door smashed open really hard and --
6 and hit the -- the wall and bounced closed and then open
7 again.

8 And during that moment, I could see an
9 officer with his pistol aimed right at the door. And
10 the door opened and stayed open and he was aiming his
11 pistol right at me.

12 I looked in his eyes. I looked in his
13 hand and he had -- I could see him squeezing his hand.
14 He was -- it was right then and now. I mean, I had no
15 choice. I was going to be shot. There was no doubt in
16 my mind.

17 Q. So you saw an officer reach through the door
18 and his pistol was aiming at you?

19 A. Yes.

20 Q. And in fact, you said that it -- his fingers
21 were such that it looked like he was going to pull the
22 trigger?

23 A. Yes.

24 Q. And what did you believe was going to happen in
25 that moment?

1 A. I was going to be shot. There was no doubt. I
2 would literally see down the barrel of his pistol, the
3 circle of the pistol pointed right at me.

4 Q. And you believed you were going to be shot
5 imminently and immediately?

6 A. Absolutely. Right then it was -- it was live
7 or die right at that moment. There's no -- it was just
8 like -- just instant.

9 Q. And do you -- and is that why you made the
10 decision to fire?

11 A. Well, I didn't really decide. I picked up my
12 shotgun when I heard the -- the shots -- what I thought
13 were shots coming through the door.

18 Q. Just in a split second?

19 A. In a -- yeah, it was a split second. It was
20 very short.

21 Q. I understand.

22 MR. SAMUEL ROSEN: I'll pass the witness.

CROSS-EXAMINATION

24 BY MR. FLOYD:

25 Q. Mr. Sharp, prior to August of 2020, you had

1 been coming to court for a separate matter, is that
2 correct, a criminal matter?

3 MR. SAMUEL ROSEN: Objection. It's beyond
4 the scope.

5 MR. FLOYD: Your Honor, he's laid out this
6 necessity of self-defense that he had to do this. I'm
7 just saying it's his knowledge of who is at his house
8 just to lay the foundation of that.

9 THE COURT: Overruled. I mean, it goes to
10 his reasonableness of his belief at the time regarding
11 his testimony.

12 Q. (BY MR. FLOYD) And were you aware that law
13 enforcement had contact with your son on your property
14 prior to this August of 2020 date?

15 A. Not that I recall, no.

16 Q. Okay. And so on this August 2020 date when
17 Eddy Luna and Nick Nolte show up, they announce
18 themselves as peace officers; correct?

19 A. I'm not sure exactly what they said.

20 Q. Do you ever recall hearing them tell you that
21 they were law enforcement officers and they were there
22 to serve a warrant?

23 A. Yes. I remember them saying something to that
24 effect.

25 Q. And just so that it's clear, you had taken

1 steps to cover all of the windows in your home with some
2 type of material throughout the house; correct?

3 A. Well, I had window shades on my windows.

4 Q. So by window shades, were you using things like
5 pieces of cardboard and the like to operate as window
6 shades?

7 A. My windows are very narrow and they're deeply
8 set. And that's exactly what I used. I used cardboard
9 to cover up the windows.

10 Q. And so at some point those deputies attempted
11 to show you a copy of the capias they were attempting to
12 serve on you; correct?

13 A. I don't recall seeing any copy of a -- when I
14 looked out the window, I saw barrels of pistols being
15 pointed at me with -- those little flashlight-mounted
16 pistols. It was a flashlight on the end of their pistol
17 shining in the windows.

18 Q. You've had an opportunity to see Nick Nolte's
19 video, correct, his body camera?

20 A. Yes. I think I have, yes.

21 Q. And so for well over an hour, those deputies
22 are attempting to make contact with you; correct?

23 A. They were banging on my roof. They had broken
24 into the back of my house and were searching all the
25 while saying that they needed to get a search warrant,

1 that they were going to get a search warrant.

2 And that scares me when -- when they're
3 walking around with pistols drawn searching my house and
4 saying they needed a search warrant and yet searched
5 anyway. In other words, what are they willing to do if
6 they are going to search without a warrant?

7 Q. Mr. Sharp, my question to you is, they were
8 having conversations with you about the capias; correct?

9 A. I would call it more in line with threats.

10 Q. Okay. You saw those as threats?

11 A. Yeah, when they --

12 Q. Okay.

13 A. -- said they were going to Tase me, take me
14 out, to gas me, to send in a SWAT team.

15 Q. And so, Mr. Sharp, they attempted to knock on
16 your door and make contact with you and you chose not to
17 do that; correct?

18 A. They kicked my door.

19 Q. My question to you is, when they first made
20 contact, they attempted to contact you and you chose not
21 to answer your door; correct?

22 A. Well, yeah. I heard --

23 Q. Okay. And throughout the course of them being
24 on scene, they introduced themselves as law enforcement;
25 correct?

BRIAN SCOTT SHARP - JULY 15, 2022
Cross-Examination by Mr. Floyd

1 A. I heard them say that a couple of times, yeah.

2 Q. Okay. And not only that, they were in uniform
3 and they also had name badges on; correct?

4 A. Uh-huh.

5 Q. Is that a yes?

6 A. Yes.

7 Q. And additionally, at some point you told them
8 to get the sheriff out there, didn't you?

9 A. I don't recall saying that, no.

10 Q. You don't recall telling them to get Mark out
11 there as they were trying to make contact with you?

12 A. No.

13 Q. Would it help refresh your recollection of that
14 if you were able to see the video of you telling them
15 that?

16 A. Yeah.

17 Q. Okay. And at some point while they're trying
18 to talk to you, there's an exchange between you and
19 those deputies about you wanting to see a copy of that
20 warrant; correct?

21 A. Right.

22 Q. And so at some point it is settled that you
23 knew what they were talking about; correct?

24 MR. SAMUEL ROSEN: Objection to form of
25 the question.

1 Q. (BY MR. FLOYD) You had told those deputies you
2 had gone down to the courthouse yourself to see if there
3 was a writ for your arrest. Is that right?

4 A. No.

5 Q. You never told them that you hadn't seen a
6 piece of paper that did not have a blue ink signature on
7 it?

8 A. That's not what you said. I looked online.
9 The court clerk sent me a copy online and I saw it and
10 it --

11 Q. And so you had seen a copy of that writ even
12 if it were unsigned; correct?

13 A. Well, I didn't recognize -- yes, that's
14 correct. I didn't recognize the writ as a warrant. I
15 don't speak Latin. I didn't understand what it was.

16 And from my understanding, a warrant needs
17 to be signed by a magistrate, that it would need
18 probable cause on its face and need to have a correct
19 address.

20 Q. Mr. Sharp, we'll get into you not understanding
21 Latin at another time because I've got a binder here
22 with all of your filings and writings and terms you
23 used.

24 MR. SAMUEL ROSEN: Objection to sidebar
25 comments.

1 THE COURT: Sustained.

2 Q. (BY MR. FLOYD) The question is, you had seen a
3 piece of paper that was directing deputies to take you
4 into custody to bring you in front of this judge; is
5 that right?

6 A. Well, I didn't see it like that. I did not
7 recognize it at the time that they had the authority to
8 do such a thing.

9 Q. You do understand the English language, right,
10 Mr. Sharp?

11 A. Fairly well.

12 Q. Okay. And so you would agree with me that the
13 clerk had sent you an alias capias in Cause Number
14 CR2019-037, your evading case, at your request; is that
15 right?

16 A. Yes.

17 Q. And in the top right of that it states, Per
18 Judge Waldrip as a condition of bond, the defendant is
19 to personally appear tomorrow, 11-5-2019, at 8:30 a.m.,
20 150 North Seguin Avenue, Third Floor, Courtroom 2, for
21 court and is to remain in the courthouse until released.

22 Did you see that typed on that document?

23 A. Well, see, there are two alias capiases, one on
24 November 4th and one on November 5th.

25 Q. Okay. And that's what I'm asking. So you've

1 seen both; right?

2 A. Well, I have now, yes. At that time, no.

3 Q. So you had only seen the second one. Is that
4 your testimony?

5 A. I believe so, yeah.

6 Q. And so the second one that states that if you
7 were to be found in Comal County, you're to have him
8 safely kept and so provide him to the district court and
9 answer to the State's indictment. You saw that
10 document?

11 A. Yeah, I think I did.

12 Q. Okay. And so your exchange with those deputies
13 about this capias, you had knowledge of it; right?

14 A. Yes, but I did not recognize it as a -- the
15 authority to come into my house and arrest me, no.

16 Q. And that's fine. You may disagree with it, but
17 you had knowledge of it. And they told you as law
18 enforcement officers they were there to execute that
19 capias; correct?

20 A. I'm not sure exactly the phraseology they used.

21 Q. They told you they were coming to get you for
22 court; right?

23 A. They said they had an arrest warrant.

24 Q. Okay. And so they told you they wanted to take
25 you into their custody; correct?

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1 A. I don't think they ever said that.

2 Q. So they told you they had an arrest warrant.
3 They would be there to arrest you; right?

4 A. They said they had an arrest warrant, yeah.

5 Q. Okay. And so you'd agree with me that they
6 were there lawfully executing their duties as deputies
7 for this county in executing that warrant and taking you
8 into custody; right?

9 A. No.

10 Q. Okay. And you would agree with me that they
11 asked you multiple times to come out and cooperate with
12 them; right?

13 A. They -- they -- they threatened me with the
14 barrel of their pistol banging on my windows from the
15 very first moment that I saw them. And I wouldn't call
16 that a negotiation. I would -- I would call that a
17 threat of deadly force.

18 Q. Yeah. You're a fugitive from justice at that
19 point; correct?

20 A. No. No. No, I was not. I was not duly
21 summoned to come to court.

22 Q. All right. And when these bangings are
23 happening on your door with a sledgehammer, you, in
24 fact, are aware enough that it's not shots because you
25 tell them, don't do that again, don't you?

1 A. No.

2 Q. You never told them, don't do that again?

3 A. No.

4 Q. And you so knew them banging on that door was
5 them trying to get inside, not shooting at you; correct?

6 A. No. They kicked the door. There was a big
7 difference between the kick on the door and the shots
8 that I -- I felt were shots fired through the door, a
9 huge difference.

10 And if you look at that video, which
11 hasn't been brought up yet, you'll see the sequence of
12 events where they were kicking and then they struck the
13 door. And those strikes with the sledgehammer sounded
14 like gunshots. They had their weapons drawn and they
15 aimed it right at me.

16 Q. And so you never shot through that door when
17 you thought shots were being fired, did you?

18 A. Shot through the door? No.

19 Q. Yes. You waited until the door was opened,
20 didn't you?

21 A. I did not -- I don't understand the question.

22 Q. Your testimony was you were standing there with
23 shotgun in hand --

24 A. When I heard those shots fired -- I keep my
25 shotgun by the door. When I heard those shots fired --

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1 what I thought were shots fired, I grabbed my shotgun.

2 Q. Because you knew they were going to arrest you,
3 didn't you?

4 A. Because I knew they were going to kill me.

5 Q. Okay.

6 A. They made that quite clear when they said they
7 were going to take me out.

8 Q. Okay. And it's your testimony that Eddy Luna
9 was standing there ready to gun you down; is that right?

10 A. Absolutely.

11 Q. Okay.

12 MR. FLOYD: Your Honor, I have previously
13 offered into evidence Nick Nolte's video. I would ask
14 to replay portions of that for the purpose of this
15 hearing, as well as for this defendant's recollection.

16 I have a copy of it, but it's not the
17 previous copy I've offered into evidence. If there's no
18 objection, I'd be happy to play this copy. But if not,
19 I can ask Cindy if she could provide that copy.

20 THE COURT: Well, hopefully you can --
21 yeah, I mean, it's in evidence. You may refer to it to
22 refresh the witness' recollection. I'd rather not just
23 sit here and listen to the hours and hours of it. I've
24 seen it before.

25 MR. FLOYD: Yes, sir.

1 (Media playing)

2 MR. FLOYD: And just for the record, I've
3 started the video at probably about the 34-minute mark
4 on Nick Nolte's body camera.

5 (Media stopped)

6 MR. FLOYD: I'm stopping the video at 35
7 minutes.

8 Q. (BY MR. FLOYD) Again, Mr. Sharp, you knew law
9 enforcement was there and you had made the decision to
10 not make contact with them; correct?

11 A. I was scared to death. But yes, they --

12 MR. FLOYD: Okay. I'm starting the video
13 at 1:10:33.

14 (Media played)

15 Q. (BY MR. FLOYD) And what we saw in this portion
16 was one of the windows that you were talking about that
17 was a little recessed, set back, and you've got
18 cardboard over it; right?

19 A. Right, and a solar panel.

20 (Media played)

21 Q. (BY MR. FLOYD) Okay. I've fast-forwarded to
22 1:12:06. Nick Nolte had inadvertently broken a piece of
23 this plexiglass window; correct?

24 A. I would say it was intentional.

25 Q. Okay. And you are pushing the cardboard up

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1 against the window as he's trying to look in; is that
2 correct?

3 A. Right.

4 (Media played)

5 Q. So you'd agree with me at this mark -- at the
6 1:12:12 mark where he's told you, I've got this warrant,
7 let's just get this over, you know who is there and what
8 they're asking for; correct?

9 A. Well, I don't -- I didn't -- see, an alias
10 capias doesn't make no sense to me.

11 Q. Well, he didn't --

12 A. I didn't see a warrant.

13 Q. Mr. Sharp --

14 A. It was not a warrant in my mind.

15 Q. And he had told you he was there and had a
16 warrant; correct?

17 While you disagree with him, my question
18 is, you heard him tell you they had a warrant for you?

19 A. He had a search warrant -- or an arrest warrant
20 he said.

21 Q. Okay.

22 MR. FLOYD: I'm going to start the video
23 again at the 1:20:05 mark.

24 (Media played)

25 Q. (BY MR. FLOYD) And at this portion you are

1 having a conversation with these deputies; correct?

2 A. Right.

3 (Media stopped)

4 MR. FLOYD: I'm stopping the video and
5 starting it back at the 1:32:42 mark.

6 (Media played)

7 Q. (BY MR. FLOYD) And so at the 1:33:29 mark, we
8 saw Nick Nolte kicking your door. You never made a
9 statement at that time, did you?

10 A. What does that mean?

11 Q. We didn't hear you say anything on this video,
12 did we?

13 A. Just then?

14 Q. Yes.

15 A. I didn't hear anything.

16 Q. Okay. And so they're attempting to get in.
17 And again, you're -- you're not cooperating, are you?

18 A. I'm not un -- I'm scared -- I'm scared to death
19 at this point. They've already searched the back half
20 of my house. They've knocked dishes into the floor
21 banging on my walls. They're stomping on the roof.
22 They're pointing their pistols in the windows. They're
23 threatening to take me out. I'm scared to death at this
24 point. I'm horrified. Every -- there's one around the
25 back. There was one around the front. You could show

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1 a --

2 Q. And so, Mr. Sharp, I'm going to start the video
3 at 1:33:58.

4 (Media played)

5 Q. (BY MR. FLOYD) And you'd agree with me right at
6 this moment at 1:34:10, Eddy Luna does not have a gun in
7 his hand, does he?

8 A. He doesn't appear to, huh-uh.

9 (Media played)

10 Q. (BY MR. FLOYD) Okay. All right. So I just
11 stopped it at 1:34:19. With the sledgehammer against
12 your door, we heard you say, don't do that again.
13 Correct?14 A. Right. They need to basically just stop and
15 consider what they're doing. They're trespassing on my
16 property. They had to go around a locked gate, over a
17 barbwire topped wall, past three no trespassing signs
18 just to get where they are.19 Q. And so we don't hear you say, please don't kill
20 me. We don't hear you say, please stop shooting. We
21 hear you tell deputies, don't do that again, don't we?

22 A. That's what I heard.

23 Q. Okay. I'm going to resume the video at this
24 point.

25 (Media played)

1 Q. (BY MR. FLOYD) I'm stopping at 1:34.30. You're
2 having a conversation back and forth with them, aren't
3 you?

4 A. They said they needed -- they don't need a
5 search warrant, yet they searched already.

6 Q. Mr. Sharp, my question is, at this point are
7 you having a conversation with those deputies through
8 your door?

9 A. I wouldn't call that a conversation. I would
10 say -- we're talking back and forth. I don't suppose
11 that would --

12 Q. Okay.

13 (Media played)

14 Q. (BY MR. FLOYD) And right here you don't see
15 Eddy Luna with a gun drawn, do you?

16 A. Is that Eddy Luna right there?

17 Q. Yes.

18 A. He has his hand on his pistol.

19 Q. On his pistol?

20 A. They said that I was a wanted felon. I was not
21 a felon.

22 Q. And my question to you, Mr. Sharp, is do you
23 see Eddy Luna's gun drawn, pointed at anything at this
24 point?

25 A. It looks like he's pulling his weapon out right

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1 there.

2 Q. I know you're saying it looks like. My
3 question to you in this still shot at 1:34:57 is, does
4 he have his gun out of his holster?

5 A. It doesn't look like it, but I can't tell.

6 (Media played)

7 Q. (BY MR. FLOYD) And at 1:35:16 Nick Nolte kicked
8 your door in while you were talking on the other side of
9 that door; correct?

10 A. Right.

11 Q. And you'd agree with me he was not using a
12 sledgehammer, so it did not have the same sound as it
13 did earlier when you told them to not do that again;
14 correct?

15 A. It definitely was loud, definitely loud
16 kicking. That's what I remember, the crack of the door.

17 Q. And so I'm going to resume here, but you see
18 two deputies standing at your door at this point;
19 correct?

20 A. One right there.

21 Q. And you can see both of his hands and he does
22 not have a firearm in his hand; right?

23 A. That's Nolte right there.

24 Q. That's what I'm asking you. This deputy, you
25 do not see a firearm in his hand, do you?

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1 A. No.

2 (Media played)

3 Q. (BY MR. FLOYD) And so as soon as that door
4 comes open, you lowered your gun down and you shoot at
5 those deputies, don't you?6 A. No. If you look to the -- the left of the
7 screen, to the right Luna is standing there with his
8 pistol. You can't see it on this. Luna is standing
9 there with his pistol drawn right there, aimed right at
10 me at that moment the door was opened. Why don't you
11 re -- well --

12 Q. All right. Let's play this again.

13 (Media playing)

14 A. Right there you can see Luna's hand on his
15 pistol.16 Q. (BY MR. FLOYD) Okay. Hand on his pistol;
17 right?

18 A. Right there.

19 Q. You can see his body turn?

20 A. I can see his pistol.

21 Q. In this still shot at 1:35:16, you're saying
22 you can see his pistol?

23 A. Right there on the very lower left corner.

24 (Media stopped)

25 Q. (BY MR. FLOYD) And so your testimony earlier

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1 was that this pistol was pointed right at you. You
2 could see down the barrel of that pistol?

3 A. Absolutely.

4 Q. And you would agree with me that that is not
5 reflected in Nick Nolte's video at that 1:35 mark, is
6 it?

7 A. It's not shown.

8 Q. Okay.

9 MR. FLOYD: Pass the witness, Your Honor.

10 MR. SAMUEL ROSEN: Pass the witness.

11 THE COURT: Okay. Thank you. You may
12 step down.

13 And, Mr. Rosen, anything further at this
14 time?

15 MR. SAMUEL ROSEN: Not in terms of
16 additional testimony.

17 THE COURT: Okay. Well, the State's
18 motion in limine is granted regarding both necessity and
19 self-defense.

20 And do y'all have anything further today,
21 either side?

22 MR. SAMUEL ROSEN: No, Your Honor.

23 MR. FLOYD: Nothing from the State,
24 Your Honor.

25 THE COURT: Okay. I wanted to talk about